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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re the Marriage of  
JALEH and THEODORE FOLKERT.

THEODORE FOLKERT,  
  
Respondent,

v.

JALEH FOLKERT,  
  
Appellant.

B201124

(Super. Ct. No. BD441072)

APPEAL from orders of the Superior Court of Los Angeles County.

Thomas Trent Lewis, Judge. Affirmed.

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Law Offices of Najila K. Brent and Najila K. Brent for Appellant.

Law Offices of Robert C. Moest, Robert C. Moest; The Law & Mediation Offices  
of Pauline Rosen and Pauline M. Rosen for Respondent.  
  
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Jaleh Folkert appeals from two postjudgment orders in this marital dissolution action. We affirm.

### BACKGROUND

On February 23, 2006, Theodore (Ted) Folkert filed a petition for dissolution of his marriage to Jaleh Folkert.<sup>1</sup> On September 25, 2006, the parties participated in a confidential mediation and entered into a settlement agreement resolving almost all issues (e.g., the division of the “furniture, furnishings, art and antiques” was not resolved). Under the agreement, the former family residence was to be sold, with “the net proceeds of sale” to be “divided 45 [percent] to Jaleh and 55 [percent] to Ted.”

The settlement agreement provided that counsel for Jaleh was “to draft the [j]udgment and forward same to counsel for Ted on or before October 9, 2006[.]” The agreement also provided that “additional ‘boilerplate’ provisions will be added to the [j]udgment . . . including but not limited to . . . general release of all known claims and unknown claims pursuant to Civil Code section 1542[.]” The retired commissioner who had conducted the mediation was to “mediate any disputes concerning the language to be included in the [j]udgment.”

Contrary to the terms of the settlement agreement, counsel for Jaleh apparently did not draft a proposed judgment by October 9, 2006. Counsel for Ted then prepared a proposed judgment and forwarded it to Jaleh’s counsel but apparently received no response. In the words of the trial court, Jaleh “simply would not approve a judgment.”

On December 5, 2006, Ted moved the trial court to enforce the settlement agreement and for entry of judgment. On April 9, 2007, the court granted the motion and entered judgment. The court did not, however, enter Ted’s proposed judgment. Rather, the court entered a form judgment of dissolution to which was attached the parties’ settlement agreement. The court declined to accept Ted’s proposed judgment or to add any other language to the judgment because the parties had not agreed on any such

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<sup>1</sup> To avoid confusion, we shall refer to the parties by their first names. No disrespect is intended.

language and the settlement agreement “specifically assigned resolution of such dispute[s] to” the mediator.

On April 20, 2007, Ted filed an order to show cause for distribution of the net proceeds of the sale of the former family residence, and for attorney’s fees and costs. He contended that although the sale of the residence had closed on March 28, 2007, the net proceeds had not been distributed because the parties had been unable to agree on the amounts to which they were entitled under the settlement agreement and judgment. Ted provided the court with evidence and calculations concerning the parties’ shares of the net proceeds, and he requested that the proceeds be distributed in accordance with his calculations. He sought attorney’s fees and costs incurred in attempting to resolve the dispute concerning the distribution of the proceeds.

On May 29, 2007, Jaleh filed a responsive declaration to Ted’s order to show cause. She too sought distribution of the net proceeds but in accordance with her own evidence and calculations, which purported to show that she was entitled to \$201,494.19, with Ted receiving \$163,643.10. She also sought \$2,700 in attorney’s fees incurred in litigating the distribution of the proceeds, plus an unspecified amount as sanctions for Ted’s “vexatious litigation tactics.”

In his reply papers, Ted submitted additional evidence and calculations, purporting to show that he should receive \$264,002, with Jaleh receiving \$101,135. Jaleh filed a “reply” responding to Ted’s reply, again arguing that his calculations were incorrect. On June 6, 2007, Ted filed a motion for attorney’s fees and costs both as sanctions and pursuant to the settlement agreement. The motion sought fees incurred between September 25, 2006 (execution of the settlement agreement) and April 9, 2007 (entry of judgment) to enforce the settlement. Ted contemporaneously filed an income and expense declaration.

On July 12, 2007, the trial court conducted an evidentiary hearing on the order to show cause for distribution of the net proceeds of the sale of the residence. The court heard testimony and entered an order providing that the proceeds were to be distributed \$264,002 to Ted and \$101,135 to Jaleh (i.e., in accordance with the calculations in Ted’s

reply papers). The order also provided that from each party's share of the proceeds, \$25,000 was to be held for potential reimbursement for attorney's fees and costs. The court continued the hearing on the attorney's fees requests to July 23. On July 16, 2007, Jaleh filed an income and expense declaration. On the same day, she also filed a second responsive declaration to Ted's order to show cause, this time requesting attorney's fees and costs of \$18,550 as a sanction for Ted and his counsel's "needlessly vicious and fraudulent conduct, abuse of process and malicious litigation tactics[.]"

On July 23, 2007, the court heard further testimony and entered an amended order reiterating the provisions of the July 12 order. The court took the parties' requests for sanctions and attorney's fees under submission.

On July 24, 2007, the court entered an order ruling on the submitted matter. The court granted Ted's request for attorney's fees and costs incurred in obtaining entry of judgment, awarding \$5,000 pursuant to Family Code sections 2032 and 271.<sup>2</sup> The award apparently was based at least partly on the court's determination that Ted was forced to bring the motion because Jaleh "simply would not approve a judgment." The court also granted both parties' requests for attorney's fees and costs related to the distribution of the proceeds of the sale of the residence, awarding \$3,000 to Jaleh and \$12,000 to Ted, again pursuant to sections 2032 and 271. The \$12,000 award to Ted apparently was based at least partly on the court's determination that Jaleh's "bad faith, wholly unjustified" approach to calculating the parties' shares of the net proceeds constituted "a burlesque upon language, common sense and the law." The \$3,000 award to Jaleh apparently was based at least partly on the court's determination that Ted had claimed reimbursement for certain expenses "for which he was not entitled to seek reimbursement under the [settlement agreement]." The three awards resulted in a net award to Ted of \$14,000, to be paid from Jaleh's "share of the sequestered escrow funds" under the July 12 and July 23 orders.

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<sup>2</sup> All subsequent statutory references are to the Family Code unless otherwise indicated.

Jaleh timely appealed from both the July 12 and July 23 orders concerning distribution of proceeds and the July 24 order awarding attorney's fees and costs. Ted did not appeal.

## DISCUSSION

### I. The Attorney's Fees Awards

We review awards of attorney's fees under sections 271 and 2032 for abuse of discretion. (*In re Marriage of Falcone & Fyke* (2008) 164 Cal.App.4th 814, 828; *In re Marriage of Keech* (1999) 75 Cal.App.4th 860, 866-867.) Jaleh argues on several grounds that the trial court's rulings on the requests for attorney's fees constituted abuses of discretion.<sup>3</sup> We conclude that none of Jaleh's arguments has merit.

First, Jaleh argues that there was no basis for an award of attorney's fees under section 271 because Ted's requests for fees contained "nothing which supported the idea that [Jaleh] frustrated settlement." The argument fails because frustrating settlement is not the only permissible basis for an award of fees under section 271. Rather, the statute provides for an award of attorney's fees and costs based on "the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation *and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys.*" (§ 271, subd. (a), italics added.) The trial court's findings, which Jaleh does not challenge, show that by refusing to prepare or agree to a proposed judgment, Jaleh frustrated the policy of the law to reduce the cost of litigation by encouraging cooperation between the parties and attorneys.

Second, Jaleh argues that the trial court abused its discretion "when it only awarded \$3,000 attorney fees and cost[s] as sanction[s]" against Ted, because Jaleh "was forced to defend against [Ted's] frivolous, malicious and abusive litigation tactics[.]" In

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<sup>3</sup> We will generally confine our discussion to the contentions in Jaleh's opening brief, because points raised for the first time in a reply brief are waived unless good cause is shown for failing to raise them earlier, and no good cause was shown by Jaleh. (*Neighbours v. Buzz Oates Enterprises* (1990) 217 Cal.App.3d 325, 335, fn. 8; *Campos v. Anderson* (1997) 57 Cal.App.4th 784, 794, fn. 3.)

her opening brief, however, Jaleh cites nothing in the record on which the trial court should have based a larger award—the only citation to the record in connection with this argument is a reference to the court’s order granting the parties’ attorney’s fees requests. We therefore treat the point as waived. (*Guthrey v. State of California* (1998) 63 Cal.App.4th 1108, 1115-1116; see also Cal. Rules of Court, rules 8.204(a)(1)(B), 8.204(a)(1)(C).)

Third, Jaleh argues that “there was insufficient evidence of ability by [Jaleh] to pay the” amount of sanctions awarded to Ted. The argument fails because the order awarding sanctions expressly provided for the sanctions to be paid from the \$25,000 that had been withheld from Jaleh’s share of the proceeds of the sale of the residence. The net award to Ted was \$14,000. Because the award was paid from a court-ordered reserve of \$25,000, the court had before it conclusive evidence of ability to pay. Moreover, Jaleh’s opening brief cites no evidence showing inability to pay—she does not even cite the income and expense declaration that she filed on July 16, 2007, in which she stated that she had assets of \$130,300.

Fourth, Jaleh contends, without further explanation, that “there was not appropriate notice of the possibility of a sanction award.” As support, she cites Ted’s order to show cause for the distribution of the proceeds of the sale of the residence; the order to show cause expressly requested attorney’s fees on the first and second pages. Ted’s subsequent motion for attorney’s fees and costs likewise expressly sought such relief. Jaleh provides no other argument or evidence in support of her contention that notice was inadequate, so we reject it.

The “legal discussion” section of Jaleh’s opening brief also contains various other contentions that are insufficiently supported by argument, citation to the record, or citation of legal authority. We need not address such contentions. (*Guthrey v. State of California, supra*, 63 Cal.App.4th at pp. 1115-1116; see also Cal. Rules of Court, rules 8.204(a)(1)(B), 8.204(a)(1)(C).)

For all of the foregoing reasons, we conclude that Jaleh has failed to show that the trial court’s orders awarding attorney’s fees constituted an abuse of discretion.

## II. The Request for Continuance of the July 23, 2007, Hearing

Jaleh argues that the trial court abused its discretion when it denied her request for a continuance of the July 23, 2007, hearing. The request was based on Jaleh's counsel's representation that she had to go to the hospital to be with a friend and client who was dying and for whom she had power of attorney to consent to lifesaving medical procedures. The argument fails because the record reflects that when presented with Jaleh's counsel's request, the court immediately stated its intention to grant the request ("All right. That's fine. I understand. . . . I'm going to continue the matter if that is what the situation is . . . . Okay. Then I'm going to have to let her go. I don't know what else to do, counsel."). When the court subsequently asked Jaleh's counsel for a declaration setting forth the nature of the emergency and attaching the durable power of attorney, however, Jaleh's counsel withdrew her request for the continuance. The court initially emphasized its willingness to continue the matter ("No, I'm going to let you go.") but ultimately agreed to accept counsel's withdrawal of the request ("The matter is not continued. I will hear argument today."). The trial court did not abuse its discretion either by requesting evidence supporting the request for a continuance or by failing to continue the matter once the request was withdrawn. Jaleh cites no evidence or authority to the contrary.

## III. The Order Concerning Distribution of the Sale Proceeds of the Residence

Jaleh contends that the trial court "erred with respect to distribution of home sale proceeds." (Bold and capitalization omitted.) She does not, however, support the contention with sufficient argumentation or citation of either legal authority or the record. For example, in her opening brief she does not mention, let alone attempt to distinguish, the case on which the trial court expressly relied, *In re Marriage of Drivon* (1972) 28 Cal.App.3d 896. In her reply brief, she devotes two sentences to the case, one of which is: "The facts of Drivon . . . are distinguishable from this case." For all of these reasons, we treat the contention as waived. (*Guthrey v. State of California, supra*, 63 Cal.App.4th at pp. 1115-1116; see also Cal. Rules of Court, rules 8.204(a)(1)(B), 8.204(a)(1)(C); *Campos v. Anderson, supra*, 57 Cal.App.4th at p. 794, fn. 3.)

## DISPOSITION

The orders are affirmed. Respondent's motion for sanctions is denied.  
Respondent shall recover his costs of appeal.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

WEISBERG, J.\*

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\* Retired Judge of the Los Angeles Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.